

# THE STATE OF NEW HAMPSHIRE

## SUPREME COURT

**In Case No. 2005-0284, State of New Hampshire v. Stephan A. Huntoon, the court on April 17, 2006, issued the following order:**

Following a jury trial, the defendant, Stephan A. Huntoon, was convicted on two counts of aggravated felonious sexual assault and one count of sexual assault. On appeal, he contends that the trial court erred in refusing to give a curative instruction when the State used the term “rape” in its closing argument. We affirm.

Because the trial court is in the best position to gauge any prejudicial effect the prosecutor’s closing remarks may have had on a jury, we review its decision declining to give a curative instruction under an unsustainable exercise of discretion standard. State v. Sanchez, 152 N.H. 625, 628 (2005). In presenting closing argument, a prosecutor has great latitude to both summarize and discuss the evidence presented to the jury and to urge them to draw inferences of guilt from the evidence. Id.

While we have cautioned prosecutors to avoid conduct that could potentially prejudice a defendant, and we have reversed convictions on the basis of such misconduct, see, e.g., State v. Dowdle, 148 N.H. 345, 348-49 (2002), this is not such a case. We note that although defense counsel subsequently objected to the prosecutor’s use of the word “rape” during her questioning of the victim, he first used the term “rape” in his opening statement when he spoke of the victim’s claim that she was “violently raped.” During the State’s case, a witness testified that the victim came to her house immediately after the assault and reported that the defendant had raped her. The same witness was extensively cross-examined about whether the victim or the witness had first used the term “raped.” Given the testimony presented, we conclude that the State was within its prerogative to use the term “rape” in summarizing and discussing the trial evidence presented. We therefore find no error in the trial court’s denial of the defendant’s request for a curative instruction.

Affirmed.

DUGGAN, GALWAY and HICKS, JJ., concurred.

**Eileen Fox,  
Clerk**

